

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Bell Atlantic Corporation)	CC Docket No. 98-11
for Relief from Barriers to Deployment of)	
Advanced Services)	
)	
Petition of U S WEST Communications, Inc.)	CC Docket No. 98-26
for Relief from Barriers to Deployment of)	
Advanced Telecommunications Services)	
)	
Petition of Ameritech Corporation to)	CC Docket No. 98-32
Remove Barriers to Investment in Advanced)	
Telecommunications Technology)	
)	
Petition of the Association for Local)	CC Docket No. 98-78
Telecommunications Services (ALTS) for a)	
Declaratory Ruling Establishing Conditions)	
Necessary to Promote Deployment of)	
Advanced Telecommunications Capability)	
Under Section 706 of the Telecommunications)	
Act of 1996)	
)	
Southwestern Bell Telephone Company,)	CC Docket No. 98-91
Pacific Bell, and Nevada Bell Petition for)	
Relief from Regulation Pursuant to Section)	
706 of the Telecommunications Act of 1996)	
and 47 U.S.C. § 160 for ADSL Infrastructure)	
and Service)	

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**COMMENTS OF AT&T CORP. IN CONNECTION WITH
COURT REMAND OF AUGUST 1998 ADVANCED SERVICES ORDER**

Pursuant to Public Notice dated September 9, 1999 (DA 99-1853), AT&T Corp.
("AT&T") respectfully submits these comments on the issues raised in U S WEST's petition for

review of the Commission's *Advanced Services Order*,¹ which is on remand from the United States Court of Appeals for the District of Columbia Circuit.²

INTRODUCTION AND SUMMARY

In this remand proceeding, the Commission has an opportunity to respond fully to U S WEST's claims that Section 251(c) does not apply to Digital Subscriber Line ("DSL") services offered by incumbent LECs because they are neither "telephone exchange service" nor "exchange access" within the meaning of the Communications Act. *See* 47 U.S.C. § 153(16) & (47). U S WEST first made these arguments in a footnote at the end of a sweeping petition for forbearance from Section 251 for DSL services, and slightly embellished the arguments later in two subsequent pleadings. Given U S WEST's truncated treatment of the issues, the Commission devoted relatively little space to them in the *Advanced Services Order*. U S WEST then petitioned for review in the D.C. Circuit, and for the first time presented a detailed argument. Recognizing that the context in which the issue arose had "masked its importance" and as a result the discussion in the *Order* was "lean," the Commission asked the Court for a voluntary remand to consider the issues again on "a more complete administrative record." *U S WEST Communications, Inc. v. FCC*, No. 98-1410, Motion of Federal Communications Commission for Remand to Consider Issues, pp. 3-4, 7 (D.C. Cir., filed June 22, 1999).

Having developed a more complete administrative record, the Commission can now explain more fully that U S WEST's claims are baseless. U S WEST seeks to establish that Sections

¹*Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 et al., Memorandum Opinion and Order, 13 FCC Rcd. 24011 (1998).

²*See U S WEST Communications Inc. v. FCC*, No. 98-1410, Order (D.C. Cir., August 25, 1999) (granting FCC motion for voluntary remand).

251(b) and 251(c) apply only to circuit-switched as opposed to packet-switched services³ -- an objective whose broad anticompetitive consequences are clear, given that virtually all communications services will eventually be packet-switched. But U S WEST's claims are wrong for multiple reasons.

Contrary to the arguments presented in U S WEST's appellate brief, U S WEST's DSL services are *both* "telephone exchange service" and "exchange access." As to the former, U S WEST cannot dispute that some DSL transmissions, even when considered on an "end-to-end" basis, do not leave the exchange; they terminate at the Internet Service Provider ("ISP") or at other points within the same exchange. DSL therefore includes telecommunications "service within a telephone exchange," and is thus "telephone exchange service." *See infra* Section II(A). Moreover, even if there were any doubt on that score, DSL services are "comparable services" that are provided "through a system of switches, transmission equipment, or other facilities (or combination thereof)" and that permit subscribers to originate and terminate telecommunications services. Indeed, Congress added these "comparable" services to the definition of "telephone exchange service" in the 1996 Act to include non-traditional services within an exchange offered by local exchange carriers over non-traditional facilities, such as DSL services. *See infra* Section II(B).

Furthermore, as the Commission has itself explained in a brief to the D.C. Circuit, DSL services that involve out-of-exchange transmissions are "exchange access." Since all information services have an underlying telecommunications component, the interexchange carrier that provides that underlying telecommunications for the out-of-exchange transmission is receiving "exchange access." *See infra* Section III.

³See Brief of Petitioner U S WEST Communications, Inc., *U S WEST Communications Inc. v. FCC*, No. 98-1410 (D.C. Cir.) (filed May 17, 1999), pp. 9, 16, 17-18, 19-20 (filed May 17, 1999) ("US WEST Br.").

Finally, even if U S WEST were correct that DSL services are not "telephone exchange service" or "exchange access," it would avail U S WEST little. The predicate for its claim -- that Section 251(c) applies to incumbent local exchange carriers only to the extent those carriers provide exchange and exchange access services -- is incorrect. By their express terms, Section 251(c)'s obligations with respect to the incumbent LECs' services and facilities do not turn on whether they involve "telephone exchange service" or "exchange access." Because that issue is fundamental to U S WEST's ultimate legal claim that its DSL services are "free from regulation" under Sections 251(c), it is addressed first, in Section I, *infra*.

I. SECTION 251(c) APPLIES TO THE DSL FACILITIES AND SERVICES OF "INCUMBENT LOCAL EXCHANGE CARRIERS" REGARDLESS OF WHETHER DSL SERVICES ARE "TELEPHONE EXCHANGE SERVICES" OR "EXCHANGE ACCESS."

To begin with, the question whether DSL services are "telephone exchange services" or "exchange access" under the Act is largely irrelevant to U S WEST's ultimate claim -- that Section 251(c) does not apply to its DSL-related services and facilities and to those of other "incumbent local exchange carriers." See Public Notice, pp. 2-3 (seeking comment on the "proper scope of the requirements of Section 251(c)"). In U S WEST's brief in the D.C. Circuit, which the Commission has placed on the record in this docket, U S WEST simply asserted, without defending, the proposition that when a LEC "is providing something that is neither 'telephone exchange service' nor 'exchange access,' it is not acting in the capacity of a LEC, and it may provide the service free from LEC regulation."⁴ That is not the law. Section 251(c) by its plain terms applies to such services when provided by incumbent LECs regardless of whether they qualify as "telephone exchange

⁴See U S WEST Br., p. 6.

services" or "exchange access," and to facilities owned *by* and incumbent LEC regardless of which telecommunications services they are used to provide.

The statutory language is unambiguous on this point. As the Commission's Public Notice points out, "section 251(c) sets forth obligations of incumbent local exchange *carriers*, and is not on its face limited to particular telecommunications *services*."⁵ Specifically, the first clause of Section 251(c) states that "each incumbent local exchange carrier" has the duties that are then set forth in the remainder of subsection (c). To be sure, the definition of "local exchange carrier" is "any person that is engaged in the provision of telephone exchange service or exchange access."⁶ But there is no dispute that U S WEST is such a "person," or that it is also an "incumbent LEC" under Section 251(h). And once a carrier is classified as an incumbent LEC, the extent to which the individual duties established by the provisions of Section 251(c) apply to its various services and facilities is determined by the specific provision in which the duty is set forth -- most of which apply to broader categories of services than merely exchange service and exchange access, and to broader categories of facilities than merely those used to provide such services.

Thus, for example, Section 251(c)(2) establishes that the duty it imposes upon incumbent LECs to provide interconnection is limited to interconnection "for the transmission and routing of telephone exchange service and exchange access" -- showing that when Congress wished to establish service-specific limitations on Section 251(c)'s duties, it did so explicitly. By contrast, other provisions of Section 251(c) are equally explicit that they apply to broader categories of services. For example, Section 251(c)(5) requires public notice of changes in the information

⁵See Public Notice, p. 2 (emphasis in original).

⁶See 47 U.S.C. § 153(26).

necessary for the transmission and routing of “services using that local exchange carrier’s facilities or networks,” and Section 251(c)(4)(A) imposes the resale obligation on “*any* telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”

Similarly, Section 251(c)(3) clearly requires an incumbent LEC to provide access to any facility that qualifies as a “network element” which the Commission directs to be made available under Section 251(d)(2), regardless of whether that incumbent LEC happens to offer “telephone exchange services” or “exchange access” over that facility. The Act defines a “network element” as “a facility or equipment used in the provision of a telecommunications service,” 47 U.S.C. § 153(29), and the term “telecommunications service” is not limited to exchange services and exchange access. *See* 47 U.S.C. § 153(46) (defining “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used”); *see also AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721, 734 (1999) (“[g]iven the breadth of this definition [of ‘network element’], it is impossible to credit the incumbents’ argument that a ‘network element’ must be part of the physical facilities and equipment used to provide local phone service”). Thus, Section 251(c)(3) plainly requires incumbent LECs to offer access to *any* of its facilities and equipment that are used in the provision of a telecommunications service (subject to the Commission’s decisions under Section 251(d)(2)). The obligations of Section 251(c)(3) are phrased in terms of access to *facilities*; those obligations do not turn on what kind of telecommunications services any particular incumbent LEC provides over such facilities.

This is underscored elsewhere in Section 251(c)(3), which makes clear that the incumbent LEC has a duty to provide access to unbundled network elements “to any requesting

telecommunications carrier for the provision of a *telecommunications service*" (emphasis added). As the Act makes plain and as the FCC has held, requesting carriers may use unbundled network elements in the provision of any telecommunications service, not just services that fit within the definitions of "telephone exchange services" or "exchange access." See 47 C.F.R. § 51.307(c) ("An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element"); *Local Competition Order*, ¶ 27 ("incumbent LECs may not impose restrictions upon the uses to which requesting carriers put such network elements").

Section 251(c)(3) reflects Congress's understanding that the incumbent LEC's monopoly power in the local exchange derives from its control of bottleneck facilities, and that it can use that monopoly power to thwart competition not only in the provision of traditional local exchange services, but in *any* service provided over bottleneck facilities, including advanced and other non-traditional telecommunications services that Congress intended the Act to foster. Indeed, AT&T and others have shown elsewhere that incumbent LECs retain the ability to leverage their monopoly into DSL services. See, e.g., *Applications for Consent to the Transfer of Control of Licenses, MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251, Reply Comments of AT&T Corp., Declaration of Janusz A. Ordover and Robert D. Willig, ¶¶ 79-80 (filed September 17, 1999). And the Commission has consistently recognized this as well; for example, pursuant to Section 251(c)(3), it recently decided that incumbent LECs must unbundle certain DSL-related facilities (packet-switching, including the associated electronics) whenever a requesting carrier is

unable to install its own electronics at the incumbent LEC's remote terminal. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC News Release, FCC 99-238 (rel. Sept. 15, 1999) (announcing rule in proceeding on remand from the Supreme Court).

This does not mean, as U S WEST's brief incorrectly suggests, that Section 251(c)(3) will require unbounded access to all of the incumbent LECs' facilities. Section 251(d)(2) provides that the Commission must consider (among other things) whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2); *see also AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. at 734-36. Under that standard, it is unlikely that incumbent LECs would be forced to unbundle the sort of non-bottleneck facilities in U S WEST's hypothetical, such as long distance or Internet backbone facilities (*see* US WEST Br. at 6 n.1) -- and no need to "interpret" Section 251(c)(3) in a manner contrary to its plain terms and purpose in order to avoid such results.

II. DSL SERVICES ARE "TELEPHONE EXCHANGE SERVICES."

In all events, DSL services are clearly "telephone exchange service[s]" under Section 153(47). 47 U.S.C. § 153(47). Recognizing that changes in technology do not always signal changes in monopolists' incentives and abilities, Congress has always spoken broadly in defining "telephone exchange service." Each of the definition's operative parts makes explicit that *any* telephone service within the exchange, "advanced" or not, is a "telephone exchange service." The statutory language in no way turns on the nature of the technology employed -- and any attempt to imply a limitation to traditional "circuit-switched services," as U S WEST proposed in its appellate brief (pp. 9, 16, 17-18, 19-20), would have startlingly anticompetitive consequences given the uniform prediction that

virtually *all* communications services eventually will be packet-switched.⁷ Nor would it matter if, as U S WEST claims, "advanced" services are not substitutes for "basic local calling" (*i.e.*, the ability to make voice calls from one phone within an exchange area to another). Like other carriers, U S WEST is constantly using its monopoly facilities to offer new services that address different needs than "basic local calling," and there is nothing in the statutory definitions that insulates these new services from regulation.

A. DSL Services Are "Telephone Exchange Services" Under Section 153(47)(A).

Prior to the 1996 Act, telephone exchange service was defined in two ways, both of which are now codified at 47 U.S.C. § 153(47)(A). First, the Act defines telephone exchange service as a "service *within* a telephone exchange" (emphasis added). Thus, any service offered within that geographic area -- be it traditional switched voice, caller ID, or U S WEST's new "DSL" service -- is a telephone exchange service.

Second, telephone exchange service also encompasses any service "*within* a connected system of telephone exchanges" that operates to furnish subscribers "an intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge" (emphasis added). Thus, if there is a larger area that comprises multiple exchanges but that operates as one exchange by allowing intercommunications in that area for a flat monthly

⁷"[A]ll electronic communications[,] are becoming digital." *Advanced Services Order*, ¶ 6. Digitized information "can be efficiently transmitted by means of 'packet switching,'" which "breaks the information up into smaller packets that are transmitted separately over the most efficient route available, and then reassembled, microseconds later, at their destination." *Id.* "Packet-switched transmission of digitized information promises a revolution in information, communications services, and entertainment" with "a variety of new services and vast improvements to existing services." *Id.*, ¶¶ 6-7.

charge, any telecommunications service of the type normally provided in a single exchange that is offered within that larger area is also a telephone exchange service.

U S WEST's attempts to place DSL services outside these definitions all fail. First, contrary to U S WEST's contention, DSL service is clearly a "service" that in many cases begins and ends "within a telephone exchange." See Public Notice at 2; U S WEST Br. at 18-19. In support of its claim, U S WEST cites recent FCC orders establishing that the jurisdictional status of Internet transmissions is evaluated on an "end-to-end" basis, and that an Internet transmission from an end user to a distant website is thus an interstate call. But those FCC orders also establish, and U S WEST cannot dispute, that *some* Internet transmissions carried over DSL facilities *do not* leave the exchange, but will terminate at the ISP (or some other location within the exchange) even when considered on an "end-to-end" basis. See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd. 3689 (¶¶ 18, 36) (1999) ("some Internet traffic is intrastate").⁸ Therefore, U S WEST's claims can be dismissed on this ground alone; DSL service is unquestionably a telecommunications "service within a telephone exchange."

Moreover, even if the statutory definition is read also to require "any-to-any" calling within the exchange,⁹ DSL services in fact permit "any-to-any" calling. U S WEST has not identified

⁸Indeed, the number of Internet transmissions that stay within the exchange is far from trivial. Many ISPs engage in the performance-enhancing practice of "local caching" of popular websites -- i.e., periodically copying the information from those distant websites and directing customer requests for those websites to the locally stored "copies." Therefore, even customer access of information that originates on an out-of-exchange website is often intra-exchange traffic. See *id.*, ¶ 18.

⁹See U S WEST Br. at 20-21 (construing "intercommunicating" to require "any-to-any" calling, and claiming this to be a requirement for a service to be "telephone exchange service").

any technology limitation that requires it to design its advanced DSL service so that each customer must designate an Internet service provider or other recipient of the customer's calls. As the FCC has recognized, the architecture permits any end-user to establish a connection with any customer located on the packet-switched network. *See Advanced Services Order*, ¶ 42 & n.73. Indeed, this is dramatically proven by the fact that, since it filed its brief in the D.C. Circuit, U S WEST has offered a new version of DSL service that is *not* "always on" -- *i.e.*, an end-user must call the ISP each time he wishes to begin a session, as end-users do today using traditional local exchange services.¹⁰ And even U S WEST's "always on" service is an "any-to-any" service, because it permits end-users to establish a connection with any ISP in the exchange, thus allowing end-users to benefit from the economies of its exchange-wide network.

Finally, U S WEST's argument that DSL services are not covered by an "exchange service charge" is circular. *See* U S WEST Br. at 22-23. If DSL services are "telephone exchange services," then the charge for those services is an exchange service charge. The Act does not confer upon LECs the ability to remove services from the definition of "telephone exchange services" simply by calling them something else on their bills.¹¹

¹⁰*See* www.uswest.com/home/offers/megabit/comparison.html (September 24, 1999) (comparison between "MegaBit Deluxe," which is "always on," "never busy," and sessions last "24 hours a day, seven days a week," with "MegaBit Select," which the end-user accesses by "click[ing] on icon" and "may be busy occasionally," and in which sessions last "two hours" and end-user "may reconnect after five minutes off-line").

¹¹The phrase "covered by the exchange service charge" likely applies only when the question is whether service within a "connected system of exchanges," and not a single exchange, qualifies as "telephone exchange service." Specifically, calls between the connected exchanges are "telephone exchange service" if, *inter alia*, such calls are included in the charge for service within the end-user's own exchange. This is the only construction of the "covered by the exchange service charge" requirement that does not render it circular and therefore meaningless.

B. DSL Services Are Also "Telephone Exchange Services" Under Section 153(47)(B).

Even if there were doubt about whether DSL services would qualify as "telephone exchange service" under subsection (A) of Section 153(47), such services clearly are "telephone exchange service" under subsection (B).

In the 1996 Act Congress added 47 U.S.C. § 153(47)(B), which picks up any "comparable" services provided through a "system of switches, transmission equipment, *or* other facilities" that allow subscribers to "originate and terminate a telecommunications service." Congress expanded the definition to make clear that *any* telephone service offered by a local exchange carrier within the exchange is "telephone exchange service," even if those services are non-traditional (like DSL) and are offered over a LEC's non-traditional facilities (like packet switches and DSLAMs, as DSL service is).

U S WEST does not (and could not) dispute that DSL services would permit a "subscriber [to] originate and terminate a telecommunications service." 47 U.S.C. § 153(47)(B). The fact that they may involve information services as well is irrelevant. "Information service" is defined in the Act as certain services that are provided "via telecommunications." *See* 47 U.S.C. § 153(20). Subscribers can contract separately with an ISP for information services (who contracts with an interexchange carrier for underlying interexchange services) and with the LEC for the underlying telecommunications service (here, DSL service). Alternatively, ISPs might purchase DSL services and use it to deliver Internet access or online content. In either case, DSL is clearly a "telecommunications service," because U S WEST's DSL services are an offering of telecommunications over its DSL facilities directly to the public or to the relevant segment of the public for a fee. *See* 47 U.S.C. § 153(46) (defining "telecommunications service"). Even if U S

WEST's DSL services provided only access to ISPs and were used solely for the transmission of information services -- and there is no technical reason or proof that they have been -- such services allow their subscribers to originate and terminate telecommunications services within the meaning of Section 153(47)(B).

U S WEST's argument that DSL service nonetheless is not "comparable" to the services in subsection (A) is incorrect. U S WEST Br. at 24-25. As noted above, even if the statutory definition is interpreted to require "any-to-any" service, DSL services satisfy that requirement. Moreover, the language of subsection (B) makes it even clearer that Congress envisioned that "comparable" services might be provided over a system of facilities that did *not* include a traditional switch. Subsection (B) includes services that are provided through a "system of switches, transmission equipment, *or* other facilities (*or combination thereof*)" (emphasis added). Therefore, the mere fact that U S WEST's advanced services may be routed over a system that bypasses the traditional central office switch, a fact on which U S WEST places such great emphasis (*see* U S WEST Br. at 19-20, 23-24), is irrelevant (particularly because those services merely use a different *kind* of switch).

Finally, the Commission should take this opportunity to clarify some of the dictum in its order approving GTE's ADSL tariff (*GTE Telephone Operating Cos.*, 13 FCC Rcd. 22466 (1998) (*GTE*)). *See* U S WEST Br. at 26 (relying on statement in *GTE* that GTE's ADSL service is like "special access," and claiming that it therefore cannot be "telephone exchange service" because the *AT&T/TCI Merger Order* held that special access services are not "telephone exchange service"). Specifically, the Commission should clarify that DSL services are *not* special access services. In particular, the two services are different in at least one respect that is fundamental to this proceeding:

Unlike special access, some DSL calls terminate *within the exchange*, at the ISP (or perhaps other points within the same exchange), and thus are telephone exchange service calls. *See supra* p. 10. Although the Commission held in *GTE* that tariffing such services at the federal level is nonetheless appropriate because of the impossibility of separating the local, intrastate non-local, and interstate traffic and because the interstate traffic is more than *de minimis*, that has no bearing on whether DSL services qualify as "telephone exchange service." Therefore, the Commission's recent holding that "special access" services are not "telephone exchange service[s]"¹² is irrelevant to the proper classification of DSL services.¹³

III. DSL SERVICES ARE ALSO "EXCHANGE ACCESS" UNDER SECTION 153(16).

It is also the case that DSL is an exchange access service. 47 U.S.C. § 153(16). Preliminarily, there is no technical reason why the DSL services at issue here cannot be used for the completion of "traditional" long distance calls. DSL services permit subscribers to "originate and terminate a telecommunications service." DSL is merely a "pipe;" the facilities can be used to complete any type of call, including "telephone toll services." Indeed, U S WEST and other LECs

¹² *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd. 3160 (¶ 135) (1999).

¹³ Similarly, U S WEST's contention (p. 26) that the FCC "ruled" in the *ISP-Bound Traffic Order* that dial-up access to the Internet can never be "telephone exchange service" is incorrect. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, 14 FCC Rcd. 3689 (1999). To the contrary, the Commission acknowledged that some Internet traffic *is* local (and therefore such calls would logically be "telephone exchange service"), even though it may be impossible to separately identify the local and the interstate calls. *Id.* at ¶ 18. To the extent that the Commission may have suggested otherwise in footnote 87 of that order, the Commission should now correct that statement and reaffirm (consistent with the remainder of that order) that *some* ISP-bound calls *are* local.

market their DSL services not just as a way to obtain access to the Internet, but as means of establishing transport links to a remote Local Area Network ("LAN"), which as a pure "telecommunications service" (and not an "information service") indisputably would involve "exchange access."¹⁴ The Commission could find DSL services to be "exchange access" for that reason alone.

But even to the extent that DSL services are used to complete out-of-exchange information service calls, they are "exchange access." To be sure, the Commission has previously indicated that ISPs receive "information access" rather than "exchange access." *Implementation of the Non-Accounting Safeguards of Sections 271 and 272*, Memorandum Opinion and Order, 11 FCC Rcd. 21905, 22023-24 (1996).¹⁵ But even if ISPs receive only "information access," DSL services still involve "exchange access." As noted earlier, "information services" are services provided "via telecommunications." 47 U.S.C. § 153(20). The provision of interexchange information calls requires the ISP to contract with a telecommunications carrier for the underlying interexchange telecommunications service. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd. 11501, 11532-33 (1998). Therefore, even if the ISP is not

¹⁴See http://www.uswest.com/pcat/small_business/product/0,1084,43_3_3,00.html (September 24, 1999) (U S WEST's DSL services are "ideal for home and basic business Internet connections, or for remote Local Area Network (LAN) access where files or applications are stored"); *see also* <http://www.pacbell.com/products/business/fastrak/dsl> (September 24, 1999) (advertising DSL links to "your company's LAN" and noting that while "Internet usage is growing at a phenomenal rate," "[t]elecommuting from remote locations is growing even faster").

¹⁵The Commission has recently noted that this holding in the *Non-Accounting Safeguards Order* is "at odds" with Commission statements in another order that entities other than telecommunications carriers purchase exchange access. *See Bell Atlantic Tel. Cos. v. FCC*, Nos. 99-1094 et al., Brief of Federal Communications Commission, p. 33 n.21 (filed July 22, 1999) (citing *Local Competition Order*, 11 FCC Rcd. at 15934-35).


receiving "exchange access," the carrier providing the underlying interexchange telecommunications is receiving "exchange access" -- as the Commission recently represented to the D.C. Circuit.¹⁶

CONCLUSION

For the foregoing reasons, the Commission should declare DSL services to be "telephone exchange service" and "exchange access."

Respectfully submitted,

MARK C. ROSENBLUM
STEPHEN C. GARAVITO
JAMES J.R. TALBOT
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-8023


DAVID W. CARPENTER
PETER D. KEISLER
DAVID L. LAWSON
JAMES P. YOUNG
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8088

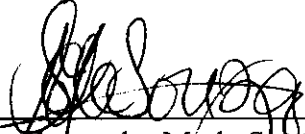
Attorneys for AT&T Corp.

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¹⁶See *Bell Atlantic Tel. Cos. v. FCC*, Nos. 99-1094 et al., Brief of Federal Communications Commission, pp. 33-34 (filed July 22, 1999) ("LECs still would be providing exchange access *in connection with* Internet-bound traffic even if only telecommunications carriers providing telephone toll service could purchase exchange access. ISPs often buy *interexchange* telecommunications services from telecommunications carriers . . . and then use those services as telecommunications components of the Internet services they offer to their own subscribers. In such circumstances, the telecommunications carriers from which the ISP buys interexchange telecommunications clearly are providing telephone toll services to the ISP (which then adds content and resells it to end users). Thus, the LEC is providing access to its exchange facilities for the origination and termination of calls that include the provision of telephone toll service *to the ISP*" (citations and footnote omitted)). Indeed, the FCC has long recognized that information service providers receive exchange access services. See, e.g., *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C.2d 682, 711 (¶ 78) (1983); *Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Notice of Proposed Rulemaking, 2 FCC Rcd 4305, 4305 (¶ 2) (1987) (noting that enhanced service providers use "exchange access service"); *GTE Telephone Operating Cos.*, 13 FCC Rcd. 22466, 22478 (¶ 21) (1998).

Certificate of Service

I, Cassandra M. de Souza, do hereby certify that I caused one copy of the foregoing Comments of AT&T Corp. In Connection with Court Remand of August 1998 Advanced Services Order to be served by First Class mail on all parties on the attached service list, this 24th day of September, 1999.



Cassandra M. de Souza
Legal Assistant

SERVICE LIST

Magalie R. Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Janice Myles
Common Carrier Bureau
Policy and Program Planning Division
Federal Communications Commission
Room 5-C327
445 12th Street, S.W.
Washington, D.C. 20554

ITS
1231 20th Street, N.W.
Washington, D.C. 20036